

PT 98-46

Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

AUNT MARTHA'S BUILDING CORP.)		
Applicant)	Docket #	94-16-1374
)	Parcel Index #	32-17-115-041
v.)		
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Berry K. Tucker, Tucker, Pavesich & Associates, Ltd., attorney for Aunt Martha's Building Corporation.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, (hereinafter the "Department"), 100 W. Randolph Street, Chicago, Illinois, on November 13, 1997, to determine whether or not Cook County Parcel Index No. 32-17-115-041 qualified for exemption during the 1994 assessment year.

Raul Garza, business manager of Aunt Martha's Youth Service Center (hereinafter referred to as the "Youth Center") and treasurer of Aunt Martha's Building Corporation (hereinafter referred to as the "Building Corporation or Applicant") and Daniel Strick, general manager of the Youth Center, previous treasurer and current vice-president of the Building

Corporation, were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during any portion of the 1994 assessment year; secondly, whether the applicant is a real estate holding corporation for a charitable organization; and lastly, whether the parcel was used for charitable purposes during the 1994 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the property for the period of December 21, 1994 through December 31, 1994. It is also determined that the applicant is a real estate holding corporation for a charitable organization. Finally, it is determined that the property was used for charitable purposes during the applicable portion of the 1994 assessment year. It is therefore recommended that 55% of Cook County Parcel Index No. 32-17-115-041 be exempt from real estate taxation for 3% of the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Cook County Parcel Index Number 32-17-115-041 did not qualify for a property tax exemption for the 1994 assessment year was established by the admission into evidence of Department's Ex. Nos. 1 through 6. (Tr. p. 12)

2. On September 11, 1995, the Department received a property tax exemption application from the Cook County Board of Review for Permanent Parcel Index Number 32-17-115-041. The applicant had submitted the request, and the board recommended an exemption from December 15, 1994 through December 31, 1994 for "all property exempt except 10% leased to profit business." The Department assigned Docket No. 94-16-1374 to the application. (Dept. Grp. Ex. No. 2)

3. On August 1, 1996, the Department denied the requested exemption application, stating as the basis of the denial:

The Department of Revenue has previously requested additional information regarding this application. The requested information was either not furnished or was insufficient to conclude that the property qualifies for exemption. Therefore, the Department has no alternative but to deny the application. If a formal hearing is requested, proper documentation should include, as a minimum, the following checked items:

COPY OF ORGANIZATION'S CHARTER OR ARTICLES OF INCORPORATION SHOWING THE PURPOSE OF THE ORGANIZATION. COPY OF YOUR 501(C)2 OR 501(C)3 EXEMPTION ISSUED BY THE INTERNAL REVENUE SERVICE.
(Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices at 100 W. Randolph, Chicago, Illinois, on November 13, 1997, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired ownership of the subject parcel by a deed dated December 21, 1994. (Dept. Grp. Ex. No. 2 pp. 5-6; Tr. pp. 17, 35)

7. Parcel Index No. 32-17-115-041 contains a building that is commonly known as the south building located at 233 West Joe Orr Road. (Dept. Ex. Nos. 2, 6; Tr. pp. 26-27)

8. The applicant was incorporated under the general not for profit corporation act on December 26, 1991. The articles of incorporation submitted with the application did not contain the purpose clause of the applicant. (Dept. Ex. No. 2 p. 14)

9. At the hearing, the applicant submitted the purpose clause of the articles of incorporation which states that the applicant is:

A Corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under 501(a) of the Internal Revenue Code of 1986. (Applicant's Ex. No. 4)

10. The applicant is requesting a property tax exemption for 5700 square feet or approximately 55% of the building on the subject property effective from the date of closing, December 21, 1994. (Tr. pp. 17, 24, 39)

11. In fact, the testimony at the hearing was as follows:

Q. (by attorney) And to the best of your knowledge in your capacity as an officer of Aunt Martha's Building Corporation, are we requesting -- are you requesting that the Department grant an exemption for only that portion of the building indicated in purple on the diagram?

A. That's correct.

Q. And that would comprise 5700 square feet?

A. That's correct.

Q. And that would be effective from the date of closing of December 21st, 1994?

A. Yes. (Tr. p. 39)

12. An investment company and an attorney occupied an area of 2,813 square feet of the building on the subject property in 1994. The attorney vacated the premises at the end of the year. (Petitioner's Ex. No. 3; Tr. pp. 18-19)

13. Shelia Creswell as sole beneficiary of Trust #4233 of the First National Bank of Chicago Heights, Illinois, entered into an office lease with Chiro Med., Ltd. on May 14, 1994 for a monthly rent of \$1350.00. The term of the lease was from June 1, 1994 to May 31, 1997. An area of 1,787 square feet of the building on the subject property was occupied by the chiropractor in 1994. He vacated the premises in April 1996. (Applicant's Ex. No. 1; Tr. p. 19)

14. On October 30, 1993, James F. Creswell and Sheila Creswell entered into an office lease with the Youth Center for the "entire north one-half of South Building located at 233 West Joe Orr Road, Chicago Heights, Illinois 60411, consisting of 5001 + or - sq. feet." The term of the lease was from January 1, 1994 through December 31, 1997. The monthly rent was \$5,001.00. (Applicant's Ex. No. 3, Post hearing Ex. No. 5; Tr. p. 18)

15. The Youth Center is organized to maintain youth service facilities offering crisis prevention and intervention, to provide testing, counseling, treatment, education and referral with

regard to youth oriented problems, to operate as an Illinois licensed Child welfare agency and to establish, operate, and maintain additional facilities and programs in connection with providing youth oriented activities. (Dept. Ex. No. 6)

16. The Youth Center used the leased portion of the subject property as principally administrative offices. The offices were used by case placement managers for both office based and remote visits to clients. (Dept. Ex. No. 2)

17. The Youth Center was granted an exemption from federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 40-41)

18. The Building Corporation is exempt from the payment of federal income taxes pursuant to a 501(c)(2) designation by the Internal Revenue Service. (Dept. Ex. No. 4)

19. I take administrative notice of the fact that the Department determined that the applicant is an exempt entity by granting it a property tax exemption pursuant to Docket No. 92-16-1419.

20. I take administrative notice of the fact that the Department determined that the Youth Center is an exempt entity by granting it a property tax exemption pursuant to Docket Nos. 91-16-818 and 92-42-66. Docket No. 91-16-818 concerned Cook County Parcel Index No. 32-17-15-010 and the north or back building located at 233 West Joe Orr Road. (Dept. Ex. No. 6)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact

legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

The Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1923). The statutory provisions in force during the 1994 assessment year concerning the exemption of real property from real estate taxation were the provisions of the Property Tax Code found at 35 **ILCS** 200/15-35 *et. seq.* At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;. . .
- (b) beneficent and charitable organizations incorporated in any state of the United States

Property otherwise qualifying for an exemption under this Section shall not lose its exemption because the legal title is held (I) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of Section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receive rent from the charitable organization for the repair and maintenance of the property

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. Rel Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); and People ex. Rel. Loyd v. University

of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. McMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 585 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based upon the deed executed on December 21, 1994, I conclude that the applicant owned the parcel here in issue from December 21, 1994 through the end of the taxable year in question. I also find that the Department has determined that the applicant is an exempt organization that qualified for exemption pursuant to Docket No. 92-16-1419. I also conclude that the lessee, the Youth Center, has also qualified for exemption from real estate taxation pursuant to Docket Nos. 91-16-818 and 92-45-66. Therefore, the Department has determined that the Youth Center is an exempt organization. The applicant is requesting a property tax exemption for an area of 2,813 square feet of the building, or approximately 55% of the area, for the period of December 21, 1994 through December 31, 1994. The applicant concedes that the sections leased to the investment company and attorney, consisting of 2813 square feet, and the area leased to the chiropractor, consisting of 1787 square feet, are not at issue and therefore do not qualify for a real estate exemption.

In compliance with the above statutory language, I find that the applicant has established that it holds legal title to the parcel at issue as of December 21, 1994. I also find that the applicant has established that it has been declared to be exempt from federal income tax pursuant to a 501(c)(2) designation by the Internal Revenue Service and that it is organized solely to hold

title to properties. I also find that the applicant leases the subject property to a charitable organization.

I therefore recommend that 55% of Cook County Parcel Index No. 32-17-115-041 be exempt from real estate taxation for the period of December 21, 1994 through December 31, 1994, or for 3% of the taxable year in question.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
June 24, 1998